

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 381 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ABBAS ALLARAKHA MIYANA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 18/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner challenges the order of preventive detention dated 29th December, 1998 made by the

Commissioner of Police, Ahmedabad City, under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'bootlegger' within the meaning of Section 2 (b) of the Act. As many as seven offences punishable under the Bombay Prohibition Act have been registered against the petitioner and five of them are pending trial. In each of the said cases, substantial quantity of country liquor and the paraphernalia of a distillery have also been found from the possession of the petitioner. Besides, two individuals have given statements in respect of the anti-social activities of the petitioner and its adverse effect on the public order. They have particularly referred to the incidents of 28th November, 1998 and 3rd December, 1998. In each of the said incidents, the petitioner is alleged to have beaten the concerned witness in a public place and to have used knife for issuing threats and for creating terror in the minds of the innocent people. The petitioner's activities are thus found to be prejudicial to the maintenance of public order and his activities are also found to be injurious to public health.

4. It is submitted that in two of the offences registered against the petitioner which were pending trial, the petitioner has not been supplied the reports of the chemical examination of the materials seized from the petitioner. The petitioner, therefore, under his representation dated 6th January, 1999, made through his advocate, requested for the said records and other documents. In spite of the said request, the said documents have not been supplied to the petitioner. The averment is not controverted.

5. It cannot be gainsaid that the reports of the chemical examination of the liquor allegedly recovered from the possession of the petitioner are vital documents and the same ought to have been supplied to the petitioner alongwith the grounds of detention. It is not the case of the respondents that such reports were not available on the date of the order. It must, therefore, be held that the subjective satisfaction recorded by the detaining authority is not based on comprehensive material and is, therefore, vitiated and the continued detention of the petitioner is unwarranted.

6. For the aforesaid reasons, this petition is allowed. The order dated 29th December, 1998; Annexure-A

to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*